

MONTANA LEGISLATIVE HISTORY

Chapter 448 19 93

Bill H 429 S _____ Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 2-11 ☒ c

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 3-5 ☒ c

3-8 ☒ c

3-17 ☒ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HB 428	1993 HISTORY AND FINAL STATUS	378
4/15	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY	35 15
4/15	3RD READING CONCURRED	29 21
4/19	RETURNED TO HOUSE WITH AMENDMENTS	
4/20	2ND READING AMENDMENTS CONCURRED	53 47
4/20	3RD READING AMENDMENTS CONCURRED	59 40
4/23	SIGNED BY SPEAKER	
4/23	SIGNED BY PRESIDENT	
4/24	TRANSMITTED TO GOVERNOR	
4/28	SIGNED BY GOVERNOR	
	CHAPTER NUMBER 561	
	EFFECTIVE DATE: 04/28/93—SECTIONS 28, 29, 31, 33 & 34	
	EFFECTIVE DATE: 07/01/93—SECTIONS 1-27, 30 & 32	

HB 428	INTRODUCED BY HARPER, ET AL. EXTEND FUNDING FOR VOLUNTARY STATEWIDE GENETICS PROGRAM	
2/02	INTRODUCED	
2/02	REFERRED TO APPROPRIATIONS	
2/02	FIRST READING	
2/09	HEARING	
2/18	COMMITTEE REPORT—BILL PASSED	
3/04	2ND READING PASSED AS AMENDED	61 38
3/19	3RD READING PASSED	70 29
	TRANSMITTED TO SENATE	
3/22	FIRST READING	
3/22	REFERRED TO FINANCE & CLAIMS	
3/25	HEARING	
3/25	COMMITTEE REPORT—BILL CONCURRED	
3/26	2ND READING CONCURRED	32 14
3/27	3RD READING CONCURRED	36 12
	RETURNED TO HOUSE	
3/31	SIGNED BY SPEAKER	
4/01	SIGNED BY PRESIDENT	
4/02	TRANSMITTED TO GOVERNOR	
4/07	SIGNED BY GOVERNOR	
	CHAPTER NUMBER 282	
	EFFECTIVE DATE: 04/07/93	

HB 429	INTRODUCED BY STRIZICH, ET AL. MAKE MANUFACTURE OF DANGEROUS DRUGS A SEPARATE OFFENSE; RAISE PENALTY	
2/02	INTRODUCED	
2/02	REFERRED TO JUDICIARY	
2/02	FIRST READING	
2/02	FISCAL NOTE REQUESTED	
2/09	FISCAL NOTE RECEIVED	
2/09	FISCAL NOTE PRINTED	
2/11	HEARING	
2/15	COMMITTEE REPORT—BILL PASSED	
2/16	2ND READING PASSED	89 10
2/16	MOTION FAILED TO SEGREGATE FROM COMMITTEE OF THE WHOLE REPORT	38 60
2/18	3RD READING PASSED	76 21
	TRANSMITTED TO SENATE	
2/20	FIRST READING	
2/20	REFERRED TO JUDICIARY	
3/05	HEARING	
3/18	COMMITTEE REPORT—BILL CONCURRED AS AMENDED	

379	HOUSE BILLS AND RESOLUTIONS	HB 431
3/19	2ND READING CONCURRED	44 3
3/22	3RD READING CONCURRED	42 6
	RETURNED TO HOUSE WITH AMENDMENTS	
4/01	2ND READING AMENDMENTS CONCURRED	96 2
4/02	3RD READING AMENDMENTS CONCURRED	96 3
4/13	SIGNED BY SPEAKER	
4/14	SIGNED BY PRESIDENT	
4/16	TRANSMITTED TO GOVERNOR	
4/21	SIGNED BY GOVERNOR	
	CHAPTER NUMBER 448	
	EFFECTIVE DATE: 10/01/93	

HB 430	INTRODUCED BY STRIZICH, ET AL. INCREASE RETIREMENT BENEFIT FOR POLICE OFFICERS WITH MORE THAN 20 YEARS	
2/02	INTRODUCED	
2/02	REFERRED TO STATE ADMINISTRATION	
2/02	FIRST READING	
2/02	FISCAL NOTE REQUESTED	
2/08	FISCAL NOTE RECEIVED	
2/09	FISCAL NOTE PRINTED	
2/11	HEARING	
2/16	TABLED IN COMMITTEE	
3/20	COMMITTEE REPORT—BILL PASSED AS AMENDED	
3/23	2ND READING PASSED	83 15
3/24	3RD READING PASSED	86 13
	TRANSMITTED TO SENATE	
3/26	FIRST READING	
3/26	REFERRED TO STATE ADMINISTRATION	
4/08	HEARING	
4/08	COMMITTEE REPORT—BILL CONCURRED	
4/12	2ND READING CONCURRED	29 14
4/13	3RD READING CONCURRED	34 15
	RETURNED TO HOUSE	
4/20	SIGNED BY SPEAKER	
4/21	SIGNED BY PRESIDENT	
4/22	TRANSMITTED TO GOVERNOR	
4/24	SIGNED BY GOVERNOR	
	CHAPTER NUMBER 522	
	EFFECTIVE DATE: 07/01/93	

HB 431	INTRODUCED BY STRIZICH, ET AL. REVISE SURVIVORSHIP ALLOWANCE IN MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM	
2/02	INTRODUCED	
2/02	REFERRED TO STATE ADMINISTRATION	
2/02	FIRST READING	
2/02	FISCAL NOTE REQUESTED	
2/08	FISCAL NOTE RECEIVED	
2/09	FISCAL NOTE PRINTED	
2/11	HEARING	
2/12	COMMITTEE REPORT—BILL PASSED AS AMENDED	
2/13	REVISED FISCAL NOTE REQUESTED	
2/19	REVISED FISCAL NOTE RECEIVED	
2/19	REVISED FISCAL NOTE PRINTED	
2/22	2ND READING PASSED	85 14
2/24	3RD READING PASSED	85 14

HOUSE BILL NO. 429

INTRODUCED BY STRIZICH, DOHERTY, J. RICE, VOGEL,
RYAN, D. BROWN, DOLEZAL, CHRISTIAENS, CLARK,
MCCULLOCH, FAGG, SCHYE

IN THE HOUSE

FEBRUARY 2, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 15, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 16, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 17, 1993	ENGROSSING REPORT.
FEBRUARY 18, 1993	THIRD READING, PASSED. AYES, 76; NOES, 21.
FEBRUARY 19, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 18, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 19, 1993	SECOND READING, CONCURRED IN.
MARCH 20, 1993	ON MOTION, PASS CONSIDERATION FOR THE DAY.
MARCH 22, 1993	THIRD READING, CONCURRED IN. AYES, 42; NOES, 6.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 2, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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House BILL NO. 429
INTRODUCED BY *Deputy Gov. David Brann* *Deputy Gov. Christopher Clark* *Deputy Gov. W. Ryan*

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS; SEPARATING THE OFFENSE FROM THE OFFENSE OF CRIMINAL SALE OF DANGEROUS DRUGS; PROVIDING PENALTIES FOR THE PRODUCTION OR MANUFACTURE OF VARIOUS TYPES OF DANGEROUS DRUGS; ELIMINATING THE REQUIREMENT THAT THE FIRST 2 YEARS OF A PRISON SENTENCE MAY NOT BE DEFERRED OR SUSPENDED; AND AMENDING SECTIONS 41-5-206 AND 45-9-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Criminal production or manufacture of dangerous drugs. (1) A person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

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(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than \$50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000. "Weight" means the weight of the plant and includes the leaves and stem structure but does

not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined in 50-32-101, are exempt from this section.

Section 2. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at

the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as included defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in [section 1];

~~{i}{J}~~ attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through ~~{i}{a}{i}{i}{H}~~ (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the

1 hearing; and

2 (d) the court finds upon the hearing of all relevant
3 evidence that there is probable cause to believe that:

4 (i) the youth committed the delinquent act alleged;

5 (ii) the seriousness of the offense and the protection
6 of the community require treatment of the youth beyond that
7 afforded by juvenile facilities; and

8 (iii) the alleged offense was committed in an
9 aggressive, violent, or premeditated manner.

10 (2) In transferring the matter of prosecution to the
11 district court, the court may also consider the following
12 factors:

13 (a) the sophistication and maturity of the youth,
14 determined by consideration of his the youth's home,
15 environmental situation, and emotional attitude and pattern
16 of living;

17 (b) the record and previous history of the youth,
18 including previous contacts with the youth court, law
19 enforcement agencies, youth courts in other jurisdictions,
20 prior periods of probation, and prior commitments to
21 juvenile institutions. However, lack of a prior juvenile
22 history with youth courts will not of itself be grounds for
23 denying the transfer.

24 (3) The court shall grant the motion to transfer if the
25 youth was 16 years old or older at the time of the conduct

1 alleged to be unlawful and the unlawful act would constitute
2 deliberate homicide as defined in 45-5-102, mitigated
3 deliberate homicide as defined in 45-5-103, or the attempt,
4 as defined in 45-4-103, of either deliberate or mitigated
5 deliberate homicide if the act had been committed by an
6 adult.

7 (4) Upon transfer to district court, the judge shall
8 make written findings of the reasons why the jurisdiction of
9 the youth court was waived and the case transferred to
10 district court.

11 (5) The transfer terminates the jurisdiction of the
12 youth court over the youth with respect to the acts alleged
13 in the petition. A youth may not be prosecuted in the
14 district court for a criminal offense originally subject to
15 the jurisdiction of the youth court unless the case has been
16 transferred as provided in this section.

17 (6) Upon order of the youth court transferring the case
18 to the district court, the county attorney shall file the
19 information against the youth without unreasonable delay.

20 (7) Any offense not enumerated in subsection (1) that
21 arises during the commission of a crime enumerated in
22 subsection (1) may be:

23 (a) tried in youth court;

24 (b) transferred to district court with an offense
25 enumerated in subsection (1), upon motion of the county

attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, his the commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of age may be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of his case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

Section 3. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away or ~~manufactures, prepares, cultivates, compounds, or processes~~ any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or ~~tetrahydrocannabinols~~ tetrahydrocannabinol, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he ~~the person~~ shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.

(5) A person who was an adult at the time of sale and

1 who is convicted of criminal sale of dangerous drugs to a
2 minor shall be sentenced as follows:

3 (a) If convicted pursuant to subsection (2), the person
4 shall be imprisoned in the state prison for not less than 4
5 years or more than life and may be fined not more than
6 \$50,000, except as provided in 46-18-222.

7 (b) If convicted of the sale of a dangerous drug
8 included in Schedule I or Schedule II pursuant to 50-32-222
9 or 50-32-224 and if previously convicted of such a sale, the
10 person shall be imprisoned in the state prison for not less
11 than 20 years or more than life and may be fined not more
12 than \$50,000, except as provided in 46-18-222.

13 (c) If convicted of the sale of a dangerous drug
14 included in Schedule I or Schedule II pursuant to 50-32-222
15 or 50-32-224 and if previously convicted of two or more such
16 sales, the person shall be imprisoned in the state prison
17 for not less than 40 years or more than life and may be
18 fined not more than \$50,000, except as provided in
19 46-18-222.

20 (d) If convicted pursuant to subsection (4), the person
21 shall be imprisoned in the state prison for not less than 2
22 years or more than life and may be fined not more than
23 \$50,000, except as provided in 46-18-222.

24 (6) Practitioners and agents under their supervision
25 acting in the course of a professional practice, as defined

1 by 50-32-101, are exempt from this section."

2 NEW SECTION. **Section 4. Codification instruction.**
3 [Section 1] is intended to be codified as an integral part
4 of Title 45, chapter 9, part 1, and the provisions of Title
5 45 apply to [section 1].

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0429, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating the offense of criminal production or manufacture of dangerous drugs; separating the offense from the offense of criminal sale of dangerous drugs; eliminating the requirement that the first two years of a prison sentence may not be deferred or suspended.

ASSUMPTIONS:

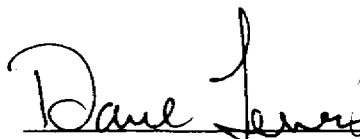
1. It is assumed that the proposal will have no material fiscal impact on the Department of Corrections and Human Services or on other state agencies.
2. It is assumed that the proposed bill will have no material fiscal impact on local governments.

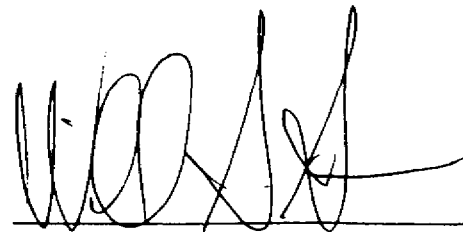
FISCAL IMPACT:

No material impact over the biennium.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

It is assumed that there will be no material fiscal impact on local governments.


DAVE LEWIS, BUDGET DIRECTOR 2-8-93 DATE
Office of Budget and Program Planning


WILLIAM "BILL" STRIZICH, PRIMARY SPONSOR 2-9-93 DATE

Fiscal Note for HB0429, as introduced

HB 429

COMMITTEE--HOUSE JUDICIARY

Page 4

BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0323	MCCARTHY, BEA		INJUNCTION AGAINST ONE CONVICTED OF CRUELTY TO ANIMALS					
	1/23	2/02		DO PASS	2/3	VOTE: 18-0		2/05
HB0335	TOOLE, HOWARD		GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS					
	1/23	2/12		PASS AS AMENDED	2/16	VOTE: 18-0		2/18
HB0340	BROWN, DAVE		INCLUDE PURCHASE OR ATTEMPT TO PURCHASE ALCOHOL UNDER POSSESSION STATUTE					
	1/25	2/02		PASS AS AMENDED	2/4	VOTE: 16-2		2/08
HB0346	BENEDICT, STEVE		MEDICAL MALPRACTICE TORT REFORM					
	1/25	2/09		PASS AS AMENDED	2/19	VOTE: 10-8		2/20
HB0357	FAGG, RUSSELL		EXPAND CATEGORY OF PERSONS PROTECTED BY AIRCRAFT LIEN					
	1/26	2/09		PASS AS AMENDED	2/9	VOTE: 18-0		2/11
HB0370	MOLNAR, BRAD		ESTABLISHING INCENTIVES TO ATTRACT DOCTORS TO MEDICAL SHORTAGE AREAS					
	1/27	2/10		TABLED ON	02/13	VOTE: 15-2	APPROPRIATIONS	
HB0396	WHALEN, TIM		REFUSAL OF DRIVER TO TAKE ALCOHOL TEST CAN'T AFFECT INSURANCE					
	1/30	2/04		PASS AS AMENDED	2/4	VOTE: 16-2		2/09
HB0405	FISHER, MARJORIE		CREATE CRIMINAL OFFENSE OF RITUAL ABUSE OF A MINOR					
	1/30	2/05		PASS AS AMENDED	2/9	VOTE: 17-1		2/11
HB0409	PAVLOVICH, BOB		SET REQUIREMENTS NECESSARY TO WAIVE INDIGENTS' FILING FEES IN COURT ACTIONS					
	1/30	2/05		DO PASS	2/5	VOTE: 18-0		2/08
HB0411	JOHNSON, ROYAL		DEPT. OF JUSTICE SUBSTANTIVE CHANGES TO GAMBLING LAWS					
	1/30	2/05		PASS AS AMENDED	2/12	VOTE: 18-0		2/17
HB0416	STRIZICH, BILL		REQUIRE REPORTING OF HATE CRIMES					
	2/01	2/10		PASS AS AMENDED	2/17	VOTE: 11-7		2/18
HB0429	STRIZICH, BILL		MAKE MANUFACTURE OF DANGEROUS DRUGS A SEPARATE OFFENSE; RAISE PENALTY					
	2/02	2/11		DO PASS	2/11	VOTE: 15-2		2/15

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on February 11, 1993,
at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Angela Russell

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 15, HB 502, HB 466, HB 429, HB 483,
HB 468
Executive Action: HB 468, HB 429, HB 483

HEARING ON SB 15

Opening Statement by Sponsor:

SEN. CHET BLAYLOCK, Senate District 43, Laurel, said that there
has been an ongoing dispute between school boards and teachers.

included. Ms. Allen said the Board of Realty Regulators would still oppose the bill. The MRR is concerned that this is simply a move to limit the liability to the broker/owner. The MRR also believes that the owner has always had the chance and responsibility to supervise the broker/associate or the sales/associate, and the amendment does not take care of that.

REP. WHALEN said he is confused as to whether there's a present duty, under the law, specifically stated in statute for a broker/owner to supervise a broker/associate; Mr. Hopgood said no, but Ms. Allen indicated the board says they do. Ms. Allen said under statute 37-51-102, it says, "The broker/associate, meaning the broker, who associates with the broker/owner, does not hold interest in the firm. A sales person, including an individual who is salary, commission, or compensated, is associated either directly or indirectly, or regularly with a real estate broker to negotiate with real estate." There may be a problem with the way the law is written, but the board has always taken the stand that the salesman means the sales person, sales/associate or broker/associate.

CHAIRMAN FAGG asked Mr. Hopgood to convince the committee that this is a good bill. Mr. Hopgood said there are a couple questions about liability. Other professions, i.e., medicine, law, architecture, don't carry liability insurance. Some doctors don't own community property; they have hidden their assets so they can't be sued, and there is nothing in the law that prohibits a person from doing that. The same holds true in the real estate business. There is nothing that prevents realtors from transferring and hiding their assets so that they can't be sued. Mr. Hopgood said if a person doesn't have a duty to supervise, which a broker/owner does, then he shouldn't be sued.

Closing by Sponsor:

REP. NORM MILLS pointed out that broker/owners and broker/associates have the same license to perform the same function and serve the public. If a broker/associate violates that license, broker/owners should be responsible for associate's mistakes.

HEARING ON HB 429

Opening Statement by Sponsor:

REP. BILL STRIZICH, House District 41, Great Falls, said there is currently no statute specifying the offense of cultivating and manufacturing dangerous drugs. This bill sends a message to those involved in the cultivation of marijuana for commercial purposes and the synthesis of other narcotics and dangerous drugs that it will be a serious felony in this state.

Proponents' Testimony:

Bryan Lockerby, Acting Sergeant, Great Falls Police Department and President, Montana Police Force Protection Association (MPFPA), said the increasing trend in drugs is the production of amphetamines. These are very dangerous substances because they are being produced in private homes. There is huge marijuana production in private homes and farms in the state, and there's no specific statute that addresses producing synthetic drugs and cultivating marijuana in the state. This bill proposes to make the first offense of the laboratory-type environment a mandatory sentence of five years. After the first conviction, the mandatory sentence is 20 years. If a person is convicted a third time, the mandatory sentence is 40 years. The MPFPA arrived at a guideline for conviction; if a person is caught growing one ounce over the one pound or growing over 30 plants, a minimum mandatory sentence of two years of prison kicks in.

Joe Roberts, Montana County Attorney Association, stated there are two purposes to this bill: The first is to add cultivation to the definition of the sale of dangerous drugs in the statute; and the second purpose is to create the substitute criminal offense of production of drugs which will broaden the meaning of cultivation.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. BIRD asked Mr. Lockerby to clarify a contradiction in the bill convicting someone who grows 15 or 30 plants. Mr. Lockerby said, currently, if law enforcement arrests someone growing 15 plants, they physically take the plants to the police department to dry and check for chemical content of the plants. Currently, a person with 15 plants, or a person with 500 plants, depending on the stage of the growth of the plant, could pay a \$100 fine to City Court and walk away. If 15, 30 or 1,000 plants are being grown, that person will be convicted of a felony.

Closing by Sponsor:

REP. STRIZICH said that, although this bill addresses cultivation of marijuana, it more importantly addresses the manufacture of other kinds of dangerous drugs. People move to Montana to manufacture drugs because it is a large, rural state. He is asking law enforcement to become more aggressive about this and ensure that people who plan on cultivating and manufacturing drugs know they will face serious charges.

Closing by Sponsor: None.

EXECUTIVE ACTION ON HB 468

Motion: REP. WYATT MOVED HB 468 DO PASS.

Discussion:

REP. BROWN said he will vote no on HB 468 because the bill is not limited to non-violent felony offenders; it includes anybody sentenced.

REP. VOGEL said he has come to realize over the past six months the tremendous burden on institutions and the attempts to alleviate some of the costs and problems. He thinks judges are responsible enough to keep those defenders where they belong, but this bill does give them some discretion. REP. VOGEL believes this bill would relieve some current and future problems.

REP. BIRD discussed a letter (EXHIBIT 5) from Correctional Sergeant Ron Paull, President, Federation of Montana State Prison Employees stating that, as a result of this legislation, the prison wants to "hold high security inmates in the building with sheet rock, which are not concrete, walls that were designed for low or medium security inmates." REP. BIRD said she wondered if that would cause a liability suit.

REP. RICE said that Mr. Paull is accusing James (Mickey) Gamble, Administrator, State Corrections Division, of bringing Wyoming's experimental concept of "community corrections" to Montana. This is not something new; Montana has been working on programs such as this for years. It is recognized that the prison system has to move in this direction. Prisoners' problems must be addressed rather than using jail as the only alternative. REP. RICE said he believes the state needs the flexibility to get the offenders into the appropriate alternative.

Vote: HB 468 DO PASS. Motion carried 16-1. REP. RUSSELL was excused from voting and REP. BROWN voted no.

EXECUTIVE ACTION ON HB 429

Motion/Vote: REP. WYATT MOVED HB 429 DO PASS. Motion carried 15-2. REP. RUSSELL was excused from voting, and REPS. BROWN and BROOKE voted no.

EXECUTIVE ACTION ON HB 483

Motion: REP. TOOLE MOVED HB 483 DO PASS.

Motion/Vote: REP. TOOLE moved to adopt the amendments. EXHIBIT

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2-11-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell			✓
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

wp.rollcall.man

CS-09

HOUSE STANDING COMMITTEE REPORT

February 12, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 429 (first reading copy -- white) do pass.

Signed: *Russ Fagg*
Russ Fagg, Chair

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-11-93 BILL NO. HB 429 NUMBER 17

MOTION: TO DO PASS (no amendments)
15-2

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	Excused	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	15	2

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 429
DATE Feb. 11, 1993 SPONSOR(S) Strizick
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JOE ROBERTS	Mt. Cty Attys Assoc.	✓	
TOM ADAMO	MT. DEPT. OF JUSTICE	✓	
Bryan Lockerby	Mont. Police Protect. Assoc.	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

COMMITTEE--SENATE JUDICIARY

Page 4

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0405	FISHER, MARJORIE	CREATE CRIMINAL OFFENSE OF RITUAL ABUSE OF A MINOR		
	2/20	3/03	3/12	CONCUR AS AMENDED 3-27
				3/30
HB0409	PAVLOVICH, BOB	SET REQUIREMENTS NECESSARY TO WAIVE INDIGENTS' FILING FEES IN COURT ACTIONS		
	2/16	3/08		CONCUR AS AMENDED 3-15
				3/15
HB0411	JOHNSON, ROYAL	DEPT. OF JUSTICE SUBSTANTIVE CHANGES TO GAMBLING LAWS		
	2/22	3/17		CONCUR 3-26
				3/27
HB0416	STRIZICH, BILL	REQUIRE REPORTING OF HATE CRIMES		
	3/01	3/16		CONCUR AS AMENDED 3-26
				3/30
HB0429	STRIZICH, BILL	MAKE MANUFACTURE OF DANGEROUS DRUGS A SEPARATE OFFENSE; RAISE PENALTY		
	2/20	3/05	3/08	CONCUR AS AMENDED 3-17
				3/18
HB0468	RICE, JIM	PREFERENCE FOR COMMITMENT TO DEPT. CORRECTIONS, NOT STATE PRISON		
	2/20	3/15		CONCUR AS AMENDED 3-26
				3/29
HB0474	PETERSON, MARY LOU	REQUIRE COUNTY ATTORNEY FUNDING IN BUDGET PROCESS		
	3/18	3/25		CONCUR 3-26
				3/27
HB0482	BOHLINGER, JOHN	CIVIL CONTEMPT FOR FAILURE TO PAY SUPPORT; SUSPENSION OF STATE LICENSES		
	3/18	3/25		CONCUR AS AMENDED 3-27
				3/30
HB0496	WYATT, DIANA	REVISE THE MONTANA HUMAN RIGHTS LAWS		
	2/20	3/12		CONCUR AS AMENDED 3-15
				3/15
HB0499	COBB, JOHN	REVISE BOARD OF BAR EXAMINERS		
	2/20	3/11		CONCUR 3-11
				3/16
HB0502	BARNETT, JOE	REVISE BAIL FORFEITURE & REQUIRE RETURN OF BOND WITHIN 30 DAYS OF CONVICTION		
	3/01	3/08		CONCUR 3-8
				3/08
HB0506	TASH, BILL	ALLOW NONPROFIT RAFFLE FOR LAND WORTH MORE THAN \$5,000		
	3/01	3/16		CONCUR 3-22
				3/23

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 5, 1993, at 10:08 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Crippen

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 582
HB 429
HB 121
HB 323

Executive Action: NONE

HEARING ON HB 582

Opening Statement by Sponsor:

Representative Brown, District 72, said HB 582 was requested to address concerns of sheriffs, peace officers, and gun owners regarding permits of concealed weapons. HB 582 would require a sheriff to give a written statement to the applicant if the permit is denied. Rep. Brown said the appeal process would allow a court to determine facts, as well as law, which is not bound by factual, legal, or other determinations of the sheriff. Rep.

into.

Senator Towe asked Mr. Beaudett about the constitutionality problem about taking peoples property. Mr. Beaudett does not feel there would be a constitutional problem because due process is available. The animals would only be taken after a second offense and after the defendants had been given an opportunity to make amends.

Senator Towe asked Mr. Beaudett if a person would have all their animals taken away if he violated rules on horse racing. Mr. Beaudett said the judges would have discretion in determining whether a person would be able to continue to own race horses. Mr. Beaudett said a person would be able to own other types of animals if there was no indication of cruelty.

Senator Towe asked Mr. Beaudett if he would object to adding the word "similar animals" instead of "any animals" on page 2, line 5. Mr. Beaudett said yes because if the wording was changed, in the Kellogg situation, numerous cases would have to have be brought against all the different types of animals.

Senator Towe asked Mr. Beaudett about language dealing with taking away specific animals. Mr. Beaudett said the judge has the discretion to review all the evidence and make an appropriate order, whether it be specific to a particular animal, or to every type of animal.

Closing by Sponsor:

Rep. McCarthy urged the Committee to pass the effective date amendment which would make it effective on passage. Rep. McCarthy said that would give the state a tool to deal with the Kellogg problem immediately.

HEARING ON HB 429

Opening Statement by Sponsor:

Representative Strizich, District 41, told the Committee that HB 429 was brought to his attention by law enforcement personal. Currently there is no statute specifying an offense relating to the manufacturing or cultivation of dangerous drugs. Rep. Strizich told the Committee that when law enforcement agencies discover a methamphetamine lab or a marijuana growing operation they have to weigh the amount of substance available at the site. The plants are uprooted and dried, then the prosecution decided if there is enough probable cause to proceed for a higher level of prosecution. Rep. Strizich gave an example. If a marijuana grower has 100 marijuana plants and their dry weight is less than 60 grams, the offense may constitute a misdemeanor even though there were 100 plants. Rep. Strizich said HB 429 with amendments would send a clear and defined message to drug manufacturers that they are not welcome in Montana and if caught manufacturing drugs

they would be committing a felony.

Proponents' Testimony:

Bryan Lockerby, Montana Police Association, said the United States is now exporting drugs instead of importing. HB 429 addresses the concern of laboratories of dangerous drugs. Mr. Lockerby said intelligence trends show that laboratories are being moving to Montana because the laws are not as strict as the west coast and it is rural, therefore they can be hidden easier. Mr. Lockerby told the Committee that HB 429 address two issues. The first issue is those people who cultivate dangerous drugs and secondly, those people who process or manufacture dangerous drugs in a laboratory environment. There is a public safety concern for those people who are manufacturing dangerous drugs. People have been killed in Montana because they did not know what they were doing and blew up their labs. Mr. Lockerby said the current problem with marijuana cultivations is that if law enforcement seizes over 100 plants they are required to dry those plants, strip them, and weigh the leafy plant material only. If the leafy plant material weighs less than 60 grams they have only committed a misdemeanor unless law enforcement can show that the person was trying to cultivate that plant for sale. Mr. Lockerby said the intention is to make cultivating marijuana a felony. Mr. Lockerby said under HB 429 if a person grows one pound or less of marijuana or has 30 plants or less, there would be no minimum mandatory. But if it is over the amount, the first offense would be a two year minimum mandatory. The penalty after that would double if there were any prior convictions. A first offense for manufacturing dangerous drugs would be a minimum mandatory of five years. The second offense would be 20 years and the third offense 40 years. Mr. Lockerby said the law would be tough, but would discourage people from coming into Montana to cultivate dangerous drugs. Mr. Lockerby urges support for HB 429.

Mike Teets, Administrator of Law Enforcement Services for the State of Montana, supports HB 429.

John Connor, Montana County Attorneys Association, supports HB 429. Mr. Conner told the Committee that the Supreme Court, in 1979, declared that cultivation was unconstitutional as included in the "sale" statute. Mr. Connor said since 1979 attorneys have not been able to charge sale by cultivation. The Montana County Attorneys Association support the concept of HB 429. Mr. Connor said that although the penalties are more severe in some instances, it is important to note that HB 429 would NOT impose a mandatory minimum.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Grosfield asked Mr. Lockerby how many marijuana plants would weigh a pound and what part of the plant would be weighed. Mr. Lockerby said the weight of the plant would include the leaves and the stem structure, but not the root structure. Mr. Lockerby said the marijuana plant produces an active ingredient called THC, which is what gets people high. Mr. Lockerby said the entire plant, minus the root structure, would be weighed in order to determine a pound because it contained THC. Mr. Lockerby said the Drug Enforcement Agency determined that a marijuana plant produced one pound of marijuana per plant.

Senator Grosfield asked Mr. Lockerby about dry weight. Mr. Lockerby said the dry weight of marijuana would be weighed.

Senator Towe asked Mr. Lockerby about the penalties. Mr. Lockerby said the first offense for manufacturing dangerous drugs would be a five year minimum mandatory. The second offense would be 20 years. The third offense would be 40 years.

Senator Towe asked Mr. Lockerby how that compared with the sale of dangerous drugs. Mr. Lockerby said the sale of any dangerous drug is a minimum mandatory of one year to life.

Senator Towe asked Mr. Lockerby if there was a second conviction for sale. Mr. Lockerby did not know.

Senator Towe asked Mr. Lockerby why the penalty for the production of dangerous drugs is more stringent than the sale of dangerous drugs. Mr. Lockerby said the people who are producing the drugs are the ones that are giving it to the people to sell, therefore the penalty should be more stringent.

Senator Towe asked Mr. Lockerby about the marijuana penalty. Mr. Lockerby said the first offense for growing marijuana is not minimum mandatory if it is less than 30 plants or under one pound. However, if it is over that amount a minimum mandatory of two years would apply. Mr. Lockerby gave an example. If a person had 20 plants that weighed over a pound the minimum mandatory would apply.

Senator Towe asked Mr. Lockerby about the sale of marijuana. Mr. Lockerby said the sale of marijuana is a minimum mandatory of one year to life.

Senator Towe said there is not a minimum mandatory sentence for the growth marijuana, if less than one pound or less than 30 plants, but there is a minimum mandatory sentence for over that amount. Mr. Connor said he agreed.

Senator Grosfield asked Mr. Lockerby about the weight of a dry plant. Mr. Lockerby said the marijuana plant could produce one pound of marijuana, beginning with the growth stage until the final development stage.

Senator Blaylock asked Rep. Strizich about alternatives to prison. Rep. Strizich said he would support alternatives to incarceration, but those people who manufacture drugs should be incarcerated and separated from society.

Senator Doherty asked Rep. Strizich about inserting "dry" in front of weight on the bottom of page 2. Rep. Strizich had no objection.

Senator Grosfield asked Rep. Strizich if dry plants would weight a pound. Rep. Strizich said yes.

Closing by Sponsor:

Rep. Strizich said HB 429 would send a clear message to drug manufacturers that they are not welcome in Montana. HB 429 sends a clear message that Montana intends to create a bad business climate for that type of industry. Rep. Strizich told the Committee that HB 429 is a good bill and recommends it BE CONCURRED IN.

HEARING ON HB 121

Opening Statement by Sponsor:

Representative Fagg, District 89, said HB 121 was requested by the Water Policy Committee. HB 121 establishes a gross negligence liability standard in damage suits against dam owners of permitted or engineered dams by people taking up occupancy downstream from an already existing dam. Rep. Fagg said the gross negligence standard would apply if someone moved below an existing dam. HB 121 establishes a penalty for failure to comply with the Montana Dam Safety Act, or rule, or order of the Department of Natural Resources and Conservation.

Proponents' Testimony:

Laurence Siroky, Montana Department of Natural Resources and Conservation, read from prepared testimony. (Exhibit #2)

Gary Fritz, Department of Natural Resources and Conservation, supports HB 121.

Jo Brunner, Executive Director of Montana Resources Association, read from prepared testimony. (Exhibit #3)

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, read from prepared testimony. (Exhibit #4)

William Antrobious, a student at the University of Montana Law School, asked who was going to pay for the dams which are located in Montana. Mr. Antrobious told the Committee that the environment is not compatible with dams. Mr. Antrobious said he

ROLL CALL

SENATE COMMITTEE Judiciary

DATE 3-5-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 8, 1993, at 10:10 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 502
	HB 409
	HB 555
Executive Action:	HB 502
	HB 134
	HB 255
	HB 429
	HB 582

HEARING ON HB 409

Opening Statement by Sponsor:

Representative Pavlovich, District 70, told the Committee HB 409 was requested by the Clerks of Court. HB 121 is an act requiring

Closing by Sponsor:

Rep. Barnett submitted a letter. (Exhibit #3)

EXECUTIVE ACTION ON HB 502

Motion/Vote:

Senator Towe moved HB 502 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 255

Discussion:

Valencia Lane explained the amendments. (Exhibit #4)

Motion:

Senator Towe moved amendment 1 and amendment 13.

Discussion:

Senator Franklin asked Ms. Lane about the burden of proof.

Vote:

The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Towe moved amendments 8 through 10 and amendments 23 and 24. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Towe moved amendments 2 through 7, amendment 11, amendments 14 through 22, and amendments 25 through 27. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Towe moved HB 255 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 429

Discussion:

Valencia Lane told the Committee that Senator Doherty asked for a one word amendment. Page 2, line 24, following "weight of the" insert "dry".

Motion/Vote:

Senator Towe moved to amend HB 429. The motion CARRIED UNANIMOUSLY.

Discussion:

Senator Grosfield asked the Committee to hold the bill for further executive action based upon a letter from Robert H. Scott. (Exhibit #5)

Senator Doherty agreed with Senator Grosfield.

Chair Yellowtail also agreed.

Senator Blaylock told the Committee that Appropriations should hear HB 429 because passage of the bill would raise the population in Montana State Prison, therefore increase the money needed for the prison.

Chair Yellowtail said after the bill was amended, HB 429 might be referred to Appropriations.

Senator Grosfield told the Committee that he did not think HB 429 could be referred to a House Committee. Chair Yellowtail said he would check to see if HB 429 could be referred to the Senate Finance and Claims Committee.

EXECUTIVE ACTION ON HB 582

Discussion:

Valencia Lane explained the amendments. (Exhibit #6)

Motion:

Senator Doherty moved to amend HB 582.

Discussion:

Senator Bartlett asked Bill Fleiner, Montana Sheriffs and Peace Officers Association, about amendment 2. Mr. Fleiner agreed with the striking of subsection 5.

Senator Bartlett asked Mr. Fleiner if subsection 5 should remain in HB 582. Mr. Fleiner said no.

Senator Crippen asked Mr. Fleiner if a District Judge would issue a permit. Mr. Fleiner said yes.

Senator Crippen asked Mr. Fleiner why a person would have to go through a firearms safety course. Mr. Fleiner asked why would anyone want to carry a firearm for protection if they did not know how to use the firearm. Mr. Fleiner said a hunter safety

ROBERT H. SCOTT

ATTORNEY AT LAW

POST OFFICE BOX 7826
MISSOULA, MONTANA 59807TELEPHONE
(406) 721-9979

March 5, 1993

Senate Judiciary Committee
Senator Yellowtail, Chmn.
c/o Rebecca Court
Room 319, Capitol Building
Helena, Montana 59620SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3-8-93
BILL NO. HB 429

Re: House Bill 429 - Production of dangerous drugs

Dear Senator Yellowtail:

I apologize for being unable to speak to the committee in person. However, I ask that you please consider this letter in lieu of my testimony.

HB 429 is poorly drafted and skewed in its sentencing provisions. It does not prescribe any sentence for first-offense manufacturers of Schedule I and Schedule II drugs. Yet, it prescribes a sentence of two years to life for growing even small amounts of marijuana.

The sentencing provisions of HB 429 are as follows.

Section 1, subsection 2: Provides sentence for manufacture of narcotics and opiates. It does not provide for a higher penalty where there have been prior convictions.

Section 1, subsection 3: Provides sentences for manufacture of Schedule I or Schedule II drugs, but only where there have been prior convictions.

Section 1, subsection 4: Provides for a 0-10 year sentence for manufacture of marijuana, THC, or a dangerous drug not referred to in subsections 2 and 3.

There are no other sentencing provisions. Thus, there is no provision for sentencing of first-offense manufacturers of Schedule I and Schedule II drugs. It is doubtless the drafters' intent to punish first-time manufacturers of Schedule I and Schedule II drugs; however, the bill simply does not provide for it.

On the other hand, the drafters have provided for an enhanced sentence of two years to life for first-time marijuana growers "if the total weight is more than a pound or number of plants is more than 30". (See page 2, lines 20-22.) Although it would appear that 31 plants are required to trigger the enhanced penalty, the weight provision negates this requirement.

Because the bill does not specify whether the plants are to be weighed when dry or when still fresh and heavy with water, and because this weight includes such non-drug material as the stem structure (page 2, line 25), the actual number of fully-grown plants that could trigger the enhanced sentence may be as low as one or two. (As an attorney, I have seen marijuana plants preserved for evidence. They look like small trees, with a lot of stem and branch material. Before it is dried, one plant could easily weigh more than a pound.) Thus,

for all practical purposes, the bill provides for punishment of two years to life for almost any first-time conviction of growing marijuana.

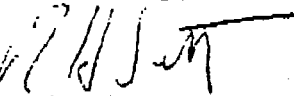
Even if the bill were worded so as to include sentencing of first-time Schedule I and Schedule II drug manufacturers under the general provision in Section 1, subsection 4, there would still be no sentence enhancement for manufacturing large amounts of these hard drugs. Thus, the first-time manufacturer of any amount of methedrine, LSD, cocaine, or crack, no matter how large, would only be subject to 0-10 years. On the other hand, as explained above, the first time marijuana grower, even of just a few plants for personal use, would receive a mandatory minimum of two years and a maximum of life.

This punishment scheme is backwards. Historically, the legislature has recognized that marijuana is not a hard drug like methedrine (speed) or crack. This is reflected in the fact that possession of small amounts of marijuana is a misdemeanor, while possession of any amount of hard drugs is a felony. Accordingly, it makes no sense to punish the small first-time grower of marijuana for personal use more harshly than the big-time speed or crack manufacturer.

The current possession statutes already provide stiff punishment for drug manufacturers when warranted. They also allow the judge to decide the appropriate sentence, taking into account the purpose for which the drug was manufactured (sale or personal use), the amounts produced, type of drug, and other factors. Mandatory minimum sentences take away the judge's discretion in favor of inflexible rules which inevitably result in miscarriages of justice. Regardless, if a mandatory minimum is ever warranted, should it not be for hard drugs like crack, rather than marijuana?

It is doubtful there is any need to change the current laws. However, if change is necessary, HB 429 is not the proper vehicle. Unless it can be amended to correct the above-mentioned problems, the bill should tabled.

Sincerely,


Robert H. Scott

cc: FAX 444-4105

20/ 444-5238
attest

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 17, 1993, at 10:06 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Kelsey S. Chapman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 307, HB 272, HB 411
Executive Action: HB 307, HB 272, HB 258, HB 429, HB 323,
HB 121

HEARING ON HB 307

Opening Statement by Sponsor:

Representative Roger Debruycker, House District 13, told the Committee HB 307 would clarify that the Department of Justice would have the authority to change the games at a fair. Presently every time a game involving gambling is brought into Montana, it must be approved by the Legislature. HB 307 would provide the Attorney General with the authority to approve of the game. Representative Debruycker passed out proposed amendments

EXECUTIVE ACTION ON HB 429Discussion:

Senator Yellowtail told the Committee amendments (hb042901.av1) had been adopted in previous action on HB 429.

Senator Grosfield asked John Connor, Attorney General's office, if he could comment on the number of marijuana plants mentioned in the Bill. He asked why the number provided for in the Bill was 30 and not some other number. Mr. Connor told the Committee there was a letter from an attorney that raised sentencing concerns with the Bill. He said he had called the crime lab to find out how marijuana plants were weighed in terms of trying to decide what weight amounted to testable weight. He was told that any time the lab tested or weighed the plants they were only in the dry form. He said only the leaves were weighed. He said the lab told him that from some individual plants a pound of dry leaves could be taken. He said the figure of 30 was arbitrary. He said the Federal Drug Enforcement Administration used the figure of 50 plants, which although arbitrary, was legitimate and legal. Mr. Connor explained that the courts realized there must be some limit set, and the Federal limit of 50 plants was set by Congress. He announced the DEA official he spoke with told him the United States was the number one marijuana exporting country in the world.

Senator Grosfield asked if the number should not be lower than 30, taking into account the co-op growing situation. Mr. Connor answered he thought some set figure had to be in the Bill from the prosecution's perspective. He said the weight of the plant would depend on the size, and thus there should be a weight or number cut-off. He said if 30 plants were involved there was little doubt a person was trying to grow them for profit rather than home use.

Senator Grosfield asked Mr. Connor if he had an idea of what the threshold number was between home use and profit growers. He said it would not make sense to have a figure high enough to include commercial operations. Senator Doherty answered that when the detectives were drafting the Bill, Detective Lockerby in Great Falls requested the number of 30. He said he did not know if this was number reasonable, but based on the detective's experience with grow operations and the co-ops, it made rational sense to choose that number.

Mr. Connor clarified he did not think if a person was growing 20 or 30 plants that the person was doing so for personal use.

Senator Grosfield asked about the inconsistency in sentencing. Mr. Connor said he had examined the letter from the attorney that addressed this issue, and the problem was the sentencing provisions of HB 429 were structurally based on the language of

MCA 49-9-101, the sale statute. He said the suggestion in the letter that there was no first offense for schedule 1 and 2 offenses was not correct because subsection 2 provides that if a person has violated MCA 50-32-101, the sentence shall be not less than 5 years. He said subsection 2 provided a first offence penalty for schedule 1 and 2 drugs. He said the lower the number of the schedule the more severe the drug, and the less the medical value. He said schedule 1 were the worst drugs. Mr. Connor continued subsection 3 provided a second or subsequent use penalty. He said the intent was not to subject marijuana growers to these harsh penalties. He said subsection 4 was just the same as MCA 49-9-101, and provided a penalty for other schedules not covered by the other subsections. He said the drug sentencing statutes were confused because they had been developed over a wide time span. He said subsection 4 had more severe penalties than its counterpart, 40-9-101, MCA. He said even though the statute said "not less than", the court had the option to defer or suspend if it deems it appropriate under the circumstances.

Motion:

Senator Doherty moved HB 429 BE CONCURRED IN AS AMENDED.

Motion:

Senator Grosfield made a substitute motion to Amend Page 2, line 22, striking "30" and inserting "20."

Discussion:

Senator Towe expressed that if the people who were working to construct HB 429 had some basis for wanting "30" in the Bill, than he would rather not amend it to read "20". He said he thought 30 was more valid.

Vote:

The Motion of Senator Grosfield to amend HB 429 FAILED with Senator Doherty, Senator Rye, Senator Halligan, Senator Towe, and Senator Bartlett voting NO. Senator Yellowtail, Senator Brown, Senator Crippen, and Senator Grosfield voted YES. Senator Harp, Senator Blaylock, and Senator Franklin, did not vote.

Vote:

The original Motion of Senator Doherty that HB 429 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY with Senator Franklin voting YES by proxy. Senator Harp and Senator Blaylock did not vote.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 17, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 429 (first reading copy -- blue), respectfully report that House Bill No. 429 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 2, line 24.

Following: "weight of the"

Insert: "dry"

-END-

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

BILL NO. HB 429

DATE 3/17/93

TIME 11 :

A.M. P.M.

NAME _____

YES

NO

[illegible]

Rebecca Court
SECRETARY

Bill Yellowtail
CHAIR

MOTION: Sen. Grosfield to amend.